

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION,)	
)	
Petitioner/Cross-Respondent)	
)	
and)	
)	
JOHN TESORIERO, MICHAEL MALONE,)	
RICHARD FARRANDS, ANDREW DUSCHEN,)	
)	
Intervenors,)	Nos. 16-3076
)	16-3570
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY, ALLIED)	
INDUSTRIAL & SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO, CLC,)	
)	
Intervenor)	

EMPLOYEE INTERVENORS' OPPOSITION
TO THE MOTION OF THE NATIONAL LABOR
RELATIONS BOARD FOR SEVERANCE
AND PARTIAL REMAND

Intervenors John Tesoriero, Michael Malone, Richard Farrands, and Andrew Duschen (“Intervenors”) file this response in opposition to the Motion of the National Labor Relations Board for Severance and Partial Remand, filed with the Court on February 9, 2018 (Dkt. # 222).

The Board has requested that the Court sever and remand two §8(a)(1) determinations the NLRB previously made with respect to Novelis’ social media workplace rule and email use rule because the prior justification for those determinations has been overturned by the Board’s recent decision in *The Boeing Company*, 365 NLRB No. 154 (2017).

While Intervenors recognize the Court’s authority to sever and remand the two predicate issues solely to permit the Board, in the first instance, to apply the new legal standard to Novelis’ workplace rules, Intervenors oppose the motion because of the potential for further delay in addressing the critical representational issue. These workplace rules have not been in effect since the issuance of the §10(j) injunction in September 2014. With due respect to the Board’s primacy and “expertise” in interpreting the NLRA, the prior determinations on these two rules, while relevant, material and cumulative, should not be permitted to deter this Court from reversing the Board’s unsustainable, “extraordinary remedy” of a bargaining order that would

impose union representation upon the Intervenors and their fellow employees by government decree.

On this date, the 4th anniversary of the NLRB election, in which a majority of Novelis employees voted against the union, Intervenors urge this Court to deny the motion and issue a decision rejecting the bargaining order for all of the reasons previously stated on the record.

Respectfully submitted,

s/Thomas G. Eron

Thomas G. Eron, Esq.

BOND, SCHOENECK & KING, PLLC

One Lincoln Center

Syracuse, NY 13202

Attorney for Intervenors, John Tesoriero,

Michael Malone, Richard Farrands & Andrew
Duschen

Dated at Syracuse, NY
this 20th day of February, 2018

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION,)	
)	
Petitioner/Cross-Respondent)	
)	
and)	
)	
JOHN TESORIERO, MICHAEL MALONE,)	
RICHARD FARRANDS, ANDREW DUSCHEN,)	
)	
Intervenors,)	Nos. 16-3076
)	16-3570
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY, ALLIED)	
INDUSTRIAL & SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO, CLC,)	
)	
Intervenor)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), Intervenors certify that their response in opposition to the motion of the National Labor Relations Board for Severance and Partial Remand contains 284 words of

proportionally-spaced, 14 point type; the word processing system used was Microsoft Word 2010.

Respectfully submitted,

s/Thomas G. Eron

Thomas G. Eron, Esq.

BOND, SCHOENECK & KING, PLLC

One Lincoln Center

Syracuse, NY 13202

Dated at Syracuse, NY
this 20th day of February, 2018

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION,)	
)	
Petitioner/Cross-Respondent)	
)	
and)	
)	
JOHN TESORIERO, MICHAEL MALONE,)	
RICHARD FARRANDS, ANDREW DUSCHEN,)	
)	
Intervenors,)	Nos. 16-3076
)	16-3570
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent/Cross-Petitioner)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY, ALLIED)	
INDUSTRIAL & SERVICE WORKERS)	
INTERNATIONAL UNION, AFL-CIO, CLC,)	
)	
Intervenor)	

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that the

foregoing document will be served via the CM/ECF system on the following
counsel, who are registered CM/ECF users:

Kurtis A. Powell, Esq.
kpowell@hunton.com
Robert T. Dumbacher, Esq.
rdumbach@hunton.com
Hunton & Williams LLP
Suite 4100
600 Peachtree Street, NE
Atlanta, GA 30308-2216

Linda Dreeben, Esq.
appellatecourt@nrlb.gov
Usha Dheenana, Esq.
usha.dheenana@nrlb.gov
Kellie J. Isbell, Esq.
kellie.isbell@nrlb.gov
National Labor Relations Board
1099 14th St., NW
Washington, DC 20570

Kenneth L. Dobkin, Esq.
ken.dobkin@novelis.com
Novelis Corporation
3560 Lenox Road, Suite 2000
Atlanta GA 30326

Richard Brean, Esq.
Daniel M. Kovallik, Esq.
rbrean@usw.org
dkovalik@usw.org
United Steelworkers of America
Room 807
5 Gateway Center
60 Boulevard of the Allies
Pittsburgh, PA 15222

Respectfully submitted,

s/Thomas G. Eron
Thomas G. Eron, Esq.
BOND, SCHOENECK & KING, PLLC
One Lincoln Center
Syracuse, NY 13202

Dated at Syracuse, NY
this 20th day of February, 2018